

## **AGREEMENT REGARDING ONLINE TRAINING**

This Agreement Regarding Online Training (the "Agreement") is by and between Rushing Marine Service, L.L.C., P.O. Box 440, Jackson, Missouri, 63755-0440 ("Rushing Marine"), and \_\_\_\_\_ ("Purchaser"). This Agreement becomes effective on the date of signature by Rushing Marine below, provided Purchaser already has signed it. In consideration of the execution and return of this Agreement, and compliance with its terms, by Purchaser, Purchaser may be permitted the opportunity to purchase Rushing Marine Online Training at prices and other terms that may be posted on Rushing Marine's website or presented in a written addendum to this Agreement.

Whenever a Purchaser purchases enrollment in Rushing Marine Online Training for its employees, contractors, and/or vendors (collectively referred to as "Trainees" or individually as "Trainee"), each Trainee also shall be required to acknowledge, in writing or in another manner acceptable to Rushing Marine, that the Trainee understands and agrees to the terms set forth below before he or she shall be permitted to begin the course.

### **1.0 Online Training Course**

Rushing Marine provides online training courses which include, but are not limited to, a training module which may include audio, text, graphics, video clips, graphic animation and review exercises, training materials, online training instructions packet(s), and a certificate of completion at the end of each course.

### **2.0 Limited Use is Permitted**

Purchasers and Trainees may use Rushing Marine's online training courses for a limited period of time (see Section 6 below) for the intended stated purpose of the course description to train themselves and, in the instance of Purchasers, to train their employees, contractors, and/or vendors as well provided an enrollment fee has been paid for each individual Trainee. No other use of any kind is permitted.

### **3.0 Not for Resale, Gift, Sublicense or Other Transfer**

Purchasers and Trainees have no right to resell, give, lend, rent, or otherwise transfer any Rushing Marine courses, or any of their contents, to any non-party to this Agreement. This restriction applies not only to the online training module itself, but also to (i) training materials, (ii) training instruction packet(s), (iii) video and audio clips, (iv) certificates of completion (except that a Purchaser or its Trainees may send their certificates of completion to appropriate regulatory agencies if required by such agencies), and/or (v) any other services or materials provided with the online training course. Rushing Marine retains full title to and ownership of its online training courses, including but not limited to all packets, materials, audio, video and graphics.

### **4.0 Not for Copying or Reproduction**

Purchasers and Trainees shall not recopy or reproduce in any form the online training modules and their contents, training materials, online instruction packets, or any other services or materials provided with the online training course. Certificates of completion may be photocopied only for the Purchaser's legitimate recordkeeping purposes or for sending them to appropriate regulatory agencies if required by such agencies.

## **5.0 Remedies for Violations of Agreement**

Any violation of Sections 2.0, 3.0, and/or 4.0 above shall cause the Purchaser and/or Trainee to forfeit its access to all of Rushing Marine's online training courses, without any right to a refund of enrollment fees. Each Purchaser and Trainee agrees that any violation or threatened violation of Sections 2.0, 3.0 and/or 4.0 would cause irreparable harm to Rushing Marine, for which there would not be an adequate remedy at law, thereby entitling Rushing Marine to obtain injunctive relief against the Purchaser and/or Trainee in court to prevent or attempt to remedy such violation, in addition to any other remedies that may be available. The Purchaser and/or Trainee shall also be liable to Rushing Marine for liquidated damages of \$10,000.00 (ten thousand dollars) for each and every violation of Sections 2, 3 and/or 4 above, since the parties agree that any such violation would damage Rushing Marine but recognize that the amount of damage would be difficult to ascertain and believe that \$10,000.00 per violation is a reasonable forecast of just compensation and is not a penalty. Rushing Marine shall be entitled to recover from any Purchaser and/or Trainee, who is involved in a violation, all of Rushing Marine's attorney's fees and expenses incurred in enforcing any provision of this Agreement.

## **6.0 Enrollment Duration**

When a Purchaser or Trainee is enrolled in a particular course, he/she will have 30 days to complete the course before the enrollment expires. If a Purchaser or Trainee does not complete the course in that time, he/she will not be allowed to finish the course unless a new enrollment for the course is purchased. It is the responsibility of Purchaser to ensure that Purchaser and/or its Trainees finish a course in the time allotted.

## **7.0 Technical Support**

Rushing Marine offers to Purchasers and Trainees reasonable technical support in connection with its Online Training, which includes e-mail or phone support, without additional charge. Support is provided during normal business hours, 8:00 a.m. to 5:00 p.m., Central Standard/Daylight Savings Time, M-F, excluding holidays. However, Purchaser and its Trainees, not Rushing Marine, are responsible for making sure that their computer or other equipment is suitable for gaining access to and clearly presenting Rushing Marine's online training courses. Rushing Marine is not a computer expert or troubleshooter.

## **8.0 Record Keeping:**

Rushing Marine is not responsible for maintaining records of completion of online training courses by Purchaser and/or its Trainees. Purchaser and/or its Trainee can print out a certificate after the course is completed. The certificate or a photocopy may be filed with the applicable government agency if the agency requires.

## **9.0 Limitation of Liability**

Notwithstanding any damages, loss, or expense of any kind that the Purchaser and/or its Trainees may suffer, or claim to have suffered, or claim to be entitled to recover as a remedy, Rushing Marine's maximum potential liability under this Agreement and/or for any and all claims arising from or related to it, regardless of the theory of relief or type of claim that may be asserted, and regardless of whether the claim is asserted by the Purchaser, the Trainee, or both of them, shall be limited to a single recovery of the amount actually paid by the Purchaser for the course fee. To the maximum extent permitted by law, Rushing Marine shall not be liable for any special, incidental, indirect or consequential damages of any kind arising from or related to Rushing Marine's online training courses, whether allegedly suffered by the Purchaser and/or its Trainees, and even in the event of negligence, fault or other breach by Rushing Marine.

## **10.0 DISCLAIMER OF WARRANTIES**

**TO THE MAXIMUM EXTENT PERMITTED BY LAW, RUSHING MARINE PROVIDES ITS COURSES “AS IS” AND WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, DISCLAIMING, AMONG OTHER WARRANTIES, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

## **11.0 Compliance with the Law**

The Purchaser and Trainees, not Rushing Marine, are responsible for ensuring that they comply with any USCG, OSHA, MSHA, DOT or any other regulatory requirements that may apply to them.

## **12.0 Additional Services**

In the event that the Purchaser and/or its Trainees desire consulting services from Rushing Marine, in addition to the above-described Online Training, they shall be contracted and paid for separately. They are not included in any online training user or course fee.

## **13.0 Not a Substitute for a Security Plan or Legal Advice**

The Rushing Marine Online Training courses offer helpful instruction about certain maritime security issues and procedures. They are not intended as a substitute or replacement for any security plan that a vessel operator or other marine operator may be required by law to implement. Nor are they intended as legal advice concerning how to comply with applicable law. The Purchaser and its Trainees agree that they must rely upon their own security officers and/or legal counsel to identify, create, and implement any security plan that the law may require.

## **14.0 Applicable Law**

This Agreement shall be governed by and interpreted according to Missouri law except to the extent, if any, that federal law may apply. Any court action to enforce this Agreement, or arising from or related to it, shall be brought in the U.S. District Court for the Eastern District of Missouri, or the Circuit Court for Cape Girardeau County, Missouri. Purchaser and its Trainees agree that personal jurisdiction shall exist over them in the State of Missouri for any claim by Rushing Marine arising from or related to this Agreement.

## **15.0 Entire Agreement**

This is the entire agreement between Rushing Marine and the Purchaser (and the Purchaser's Trainees, if any) concerning or related to the purchase and use of Online Training courses (except that course prices and certain other terms may be posted on Rushing Marine's website and/or added to this Agreement by an addendum). This Agreement supersedes all prior or contemporaneous oral or written agreements and representations, if any. This Agreement cannot be amended except by a writing signed by Rushing Marine.